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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Francis L. Garing

Serial No.: 10/804,571

Filed: March 19, 2004

For: PLANTS AND SEEDS OF VARIETY
II16412

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: DEKA:319US

| CERTIFICATE OF MAILING 37 C.F.R. § 1.8 | |
|---|----------------------|
| I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: MS Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date below: | |
| September 27, 2005 Date | Robert E. Hanson |

I. PETITION UNDER 37 C.F.R. 1.53(e)(2) TO ACCORD FILING DATE AND
II. RESPONSE TO NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL
APPLICATION FILED UNDER 37 C.F.R. 1.53(B)

MS PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b), dated March 3, 2005, Applicant hereby petitions under 37 C.F.R. 1.53(e)(2) for the office to accord a filing date of March 19, 2004, pursuant to 37 C.F.R. 1.53(b), and provide herewith the items requested in the Notice.

I. PETITION

In support hereof Applicant provides the following information:

Applicant filed the instant application on March 19, 2004. A Notice of Incomplete

Nonprovisional Application filed under 37 C.F.R. § 1.53(b) was mailed March 3, 2005,

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indicating that a filing date was not accorded to the referenced nonprovisional application for a failure to supply the drawings.

In response, Applicants note that the application was deposited without drawings because drawings are **not necessary for an understanding of the patented subject matter under 35 U.S.C. §113**. Applicants additionally respectfully note that under M.P.E.P. §608.02, an OIPE formality examiner should *not* treat an application without drawings as incomplete for a filing date under 35 U.S.C. § 111 and § 113 if the application contains:

(A) at least one process claim including the term "process" or "method" in its introductory phrase;

The current application includes at least one process claim and therefore the Notice was improperly issued for this additional reason.

Withdrawal of the Notice of Incomplete Provisional Application is requested in view of the foregoing. Pursuant to 37 C.F.R. § 1.17(h), a check in the amount of \$2020.00 is enclosed which includes the \$400.00 petition fee.

Applicants have therefore shown compliance with the requirements of 37 C.F.R. §1.53(b) in the instant application and respectfully request the office to accord a filing date of March 19, 2004, and to refund the amount of the petition fee of \$400.00 to Fulbright & Jaworski Deposit Account No. 50-1212/ DEKA:319US.

II. RESPONSE TO NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(b)

In response to the Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b), dated March 3, 2005, there are enclosed herewith:

- (a) Declaration executed on behalf of Francis L. Garing;
- (b) A Power of Attorney on behalf of Monsanto Technology, L.L.C.;
- (c) Preliminary Amendment;

- (d) Our check in the amount of \$2020.00 to cover the basic filing fee (\$790.00 – utility large entity); surcharge for late filing (\$130.00); additional claims fee (\$700.00); petition fee (\$400.00); and
- (e) A copy of Notice of Incomplete Nonprovisional Application Filed Under 37 C.F.R. § 1.53(b).

An Assignment to Monsanto Technology, L.L.C. and a check for \$40.00 are being filed under separate cover.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Commissioner is authorized to deduct or credit said fees from or to Fulbright & Jaworski Deposit Account No.: 50-1212/DEKA:319US.

Please date stamp and return the accompanying postcard to evidence receipt of these documents.

Respectfully submitted,



Robert E. Hanson
Reg. No. 42,628
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

Date: September 27, 2005